



MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 1

SERVICE STATIONS AND AUTO REPAIR SHOPS

(other than vehicle dealers)

This bulletin is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges. It contains general and specific information of interest as well as interpretations and determinations by Maine Revenue Services regarding issues commonly faced by your business. Portions of the Sales and Use Tax Law referred to in this bulletin can be found at the end of the bulletin in Attachment #1. Also attached are applicable Sales and Use Tax Rules.

This bulletin does not include information regarding the sale of vehicles. Please refer to Instruction Bulletin No. 24 - Vehicle Dealers for additional information.

The Sales and Use Tax Law requires persons engaged in the business of selling tangible personal property and taxable services to register as sellers with the State Tax Assessor, to collect the tax from their customers, and to report and pay the tax to the State on the basis of their total taxable sales multiplied by the applicable sales tax rate.

1. SALES.

a. Non taxable Sales. Sales of the following items are not subject to sales tax:

- i. Sales of gasoline;
- ii. Sales of special fuels (such as diesel, LPG and propane) on which a Maine excise tax is imposed;
- iii. Sales of heating oil and kerosene when sold for home cooking and heating;
- iv. Sales of any kind to the Federal Government, the State of Maine and political subdivisions of the State of Maine; and
- v. Sales to exempt organizations.

When making sales to government agencies, no evidence of exemption is required other than the invoice of the seller indicating a sale to an exempt governmental entity.

Sales to other states or foreign countries or their subdivisions are not exempt from Maine sales tax.

The Maine Sales and Use Tax Law provides exemptions for sales to hospitals, regularly organized churches, schools and a number of other types of organizations. Organizations that qualify for exemption must obtain exemption certificates from Maine Revenue Services in accordance with Rule 302; and sales should be made tax free to these organizations only when the purchaser furnishes a copy of its exemption certificate to the seller. The exemption does not apply to the clergy, staff, or employees of exempt organizations.

b. Taxable Sales. Sales of the following items are subject to tax:

- i. Sales of tires, batteries, parts, accessories, lubrication oils or any other tangible personal property except as noted above.
- ii. Sales of LPG and propane for use in motor homes, travel trailers, gas grills, etc.
- iii. Sales of kerosene in small containers.
- iv. Sales of heating oil and kerosene for commercial use. Certain commercial uses are exempt. Please refer to Instruction Bulletin No. 13 for more information on this subject.
- v. Sales of diesel fuel, propane or any special fuel for off-highway use.

The federal tax on tires, etc., is included in the sale price on which the sales tax is based. The sale price includes the total amount of the sale, even though part of it is paid by property traded in.

Sales of LPG and propane in 20 lb tanks or similar containers, and the sale of kerosene in 5 gallon or similar containers are not considered to be purchased for cooking or heating in homes or residences. However, if the customer provides an affidavit indicating that the fuel qualifies for exemption under 1760(9) or 1760(9-C) of the Sales and Use Tax Law, the sale would be exempt.

c. Core Charges. Customers who purchase certain property which can be reconditioned and resold by the seller are encouraged to bring their used property to the seller by being charged what is called a core charge. The core charge is usually refunded or credited to the customer when the used property is brought to the seller. Core charges are considered part of the selling price of the new property being purchased and is subject to tax. For instance, an alternator may be sold for \$80.00 with a core charge being stated in the amount of \$10.00. The total selling price subject to tax is \$90.00. If a used alternator

is traded-in at the same time as the purchase of the new alternator, the selling price subject to tax remains at \$90.00 even though a \$10.00 credit is allowed. If the used alternator is returned to the seller at a later date and the customer is refunded the \$10.00 core charge, no refund of sales tax is allowed. The definition of "sale price" does not exclude an allowance of this sort nor are core charges allowable as trade-in credits.

2. SERVICES

Service stations and auto repair shops may perform services where no sale of tangible personal property is involved, such as car washing, storage, towing charges, battery recharging, etc. Sales tax does not apply to these services. Tangible personal property such as rags, detergents, jumper cables, tools and equipment, etc., used in performing such services, is taxable at the time of purchase.

Some services, however, may include both parts and labor as discussed below:

a. Repair Work. When repairs are made to tangible personal property, and the sale of parts and labor are separately stated, sales tax applies only to the sale of parts. If no separation is made with respect to parts and labor, the entire charge is subject to tax. When repairs do not include the sale of parts, no tax is charged to the customer.

b. Tire Retreading, Recapping and Repairs. The business of retreading and recapping tires is considered to involve sales of materials used rather than to constitute rendition of service. The labor in such cases may be itemized and billed separately, in which case the sales tax applies only to the charge for materials. Where such billing is not feasible, Maine Revenue Services will accept reporting on the basis of 50% of the cost reflecting labor, and 50% of the cost reflecting materials. The tax on the retreading or recapping will then be based on 50% of the entire charge for recapping. This formula only applies to tires provided by the customer.

If casings are purchased and processed for sale, the entire sales price is subject to tax.

Ordinary tire repairs, i.e. fixing a flat, balancing, etc., is considered a service. The customer would not be charged sales tax on materials used in the repair but the service station or auto repair shop must pay tax on the purchase of such materials.

c. Greasing, Polishing and Rustproofing. Greasing, polishing and rustproofing will be considered to be the rendition of service rather than the sale of personal property unless the provider chooses to state labor and material separately in billing the customer. Where the grease used in a grease job, wax and polish used in a polishing job, or undercoating material used in a rustproofing job are not stated separately in the bill to the customer, the sales tax will not be charged the customer but the tax on such materials will be paid by the service station or auto repair shop, at the time of purchase.

d. Body Repair Shops. Body repair shops are involved in both the sale of tangible personal property and in the performance of a service. Labor charges, if separately stated, are

not subject to sales tax. Parts, such as fenders, bumpers, windshields, etc., are sales of tangible personal property and are subject to tax. Supplies used in the performance of the repair work, such as paint, fillers, tape, rags, etc., if separately stated on the invoice to the customer, are also taxable. In this case, the repair shop would be correct in purchasing supplies exempt for resale. However, if supplies are not separately stated on the invoice, the repair shop is considered to be the consumer of the supplies in the performance of their service and would be responsible for payment of the tax when purchasing such materials.

e. Manufacturer's Warranty. Manufacturer's warranties are considered part of the sales price of the item when originally purchased. Since the warranty has been taxed as part of the original purchase, parts associated with repairs pursuant to a manufacturer's warranty are not taxable.

f. Extended Warranty. The sale of an extended warranty is not taxable provided the purchaser has the option to purchase the warranty and the warranty is separately stated from the sale of the item. Parts associated with repairs pursuant to an extended warranty are taxable. Where the customer is not responsible for any additional payment for repairs under warranty, the person performing the repair is liable for use tax on the repair parts based on that person's cost. If the customer is liable for all or a portion of the repair, the person performing the repair must charge sales tax to the customer on the portion attributable to repair parts.

3. PURCHASES

A. Purchases for Own Use. On those items which the retailer uses rather than sells in the form of tangible personal property, tax should be paid to the supplier at the time of purchase. If purchases of such items are made from outside the State and tax was not paid to the supplier, the retailer should report and pay a use tax on such items. Similarly, if the retailer has purchased items tax free for resale, and later withdraws them from stock for use, use tax must be reported and paid at the time of withdrawal. Items used rather than resold will include tools and machines used in the business, fuel used for heating, materials used in tire repairs, lubricants used in grease jobs where no separate charge is made for lubricants, etc.

B. Purchases for Resale. When a retailer purchases tangible personal property for resale, the retailer should furnish the supplier with a resale certificate as provided in Rule 301. The certificate will enable the retailer to purchase tangible personal property for resale without payment of sales tax. Only one certificate need be filed with each supplier to cover subsequent purchases. However, the retailer must state to the supplier whether or not the purchase is for resale and will be held responsible for the tax on any item purchased for resale but subsequently used by the retailer.

Purchasers who avoid payment of tax through deliberate misuse of resale certificates will be subject to prosecution.

4. RECYCLING ASSISTANCE FEES

A recycling assistance fee is imposed on the retail sale of **new** tires and **new** lead-acid batteries at the rate of \$1.00 each. Sales of **used** tires and batteries are not subject to the fee. The fee is also specifically excluded from the definition of sales price and is therefore not subject to sales tax.

The fee follows the same exemptions as sales and use tax. Thus, if a sale is exempt from sales tax, it is also exempt from the fee. The fees are remitted in the same manner as sales tax through the Sales and Use Tax return, form ST-7.

The recycling assistance fee is not to be confused with the lead-acid battery deposit required by 38 M.R.S.A., 1604 which requires the retailer to charge a \$10.00 deposit to the consumer if no used battery is presented at the time of sale. The \$1.00 recycling assistance fee is in addition to the \$10.00 deposit and applies even though the deposit may not be applicable.

5. ADDITIONAL INFORMATION

The information in this bulletin addresses some of the more common questions regarding the Sales and Use Tax Law faced by your business. It is not intended to be all inclusive. Requests for information on specific situations should be in writing, should contain full information as to the transaction in question and should be directed to the:

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ATTACHMENT #1
Excerpts taken from 36 M.R.S.A.

36 1752. Definitions.

14. Sale price. "Sale price" means the total amount of a retail sale valued in money, whether received in money or otherwise.

A. "Sale price" includes:

- (1) Services which are a part of a retail sale; and
- (2) All receipts, cash, credits and property of any kind or nature and any amount for which credit is allowed by the seller to the purchaser, without any deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses or any other expenses. PL 1987, c. 497, 24 (new).

B. "Sale price" does not include:

- (1) Discounts allowed and taken on sales;
- (2) Allowances in cash or by credit made upon the return of merchandise or with respect to fabrication services pursuant to warranty;
- (3) The price of property returned or fabrication services rejected by customers, when the full price is refunded either in cash or by credit;
- (4) The price received for labor or services used in installing or applying or repairing the property sold or fabricated, if separately charged or stated;...
- (6) The amount of any tax imposed by the United States on or with respect to retail sales, whether imposed upon the retailer or the consumer, except any manufacturers', importers', alcohol or tobacco excise tax;...
- (10) The lead-acid battery deposit imposed by Title 38, section 1604, subsection 2-B.

36 1760. Exemptions.

8. Certain motor fuels. Sales of:

- A. Motor fuels upon which a tax at the maximum rate for highway use has been paid pursuant to Part 5 or a comparable tax of any other state or province;

B. Internal combustion engine fuel, as defined in section 2902, bought and used for the purpose of propelling jet or turbojet engine aircraft; and

C. Internal combustion engine fuel containing at least 10% ethanol and taxed at the rate provided in section 2903, subsection 2.

9. Coal, oil and wood. Coal, oil, wood and all other fuels, except gas and electricity, when bought for cooking and heating in homes, mobile homes, hotels and apartment houses, and other buildings designed both for human habitation and sleeping.

9-C. Residential gas. Sales of gas when bought for cooking and heating in residences. For the purpose of this subsection, "residences" shall mean homes, mobile homes, boarding homes and apartment houses, with the exception of hotels and motels.

Section 4831. Solid Waste Advance Disposal Fee Definitions.

2. Lead-acid battery. "Lead-acid battery" means a device designed and used for the storage of electrical energy through chemical reactions involving lead and acids.

3. Motorized vehicle. "Motorized vehicle" means any self-propelled vehicle, including motorcycles, construction and farm vehicles and other off-road vehicles, not operating exclusively on tracks.

4. Tire. "Tire" means the device made of rubber or any similar substance which is intended to be attached to a motorized vehicle or trailer and is designed to support the load of the motorized vehicle or trailer.

5. Trailer. "Trailer" means any vehicle without motive power that is designed to be drawn by a motorized vehicle.

Section 4832. Fee imposed

1. Imposition. A fee is imposed on the retail sale in this State of new tires, new lead-acid batteries, new major appliances, new major furniture items, new bathtubs and new mattresses. The fee is in the amount of \$1 per tire or lead-acid battery and \$5 for major appliances, major furniture items, bathtubs and mattresses. Additionally, fees in the same amounts are imposed on the storage, use or other consumption in this State of tires, lead-acid batteries, major appliances, major furniture items, bathtubs and mattresses purchased new in this State by the user or purchased out of State by the user unless either of the fees imposed by this section has been paid.